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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DWIGHT MANLEY,

Case No. 2:22-cv-01906-MMD-EJY

Plaintiff,

REDACTED

V.

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT (ECF NO. 160)**

MGM RESORTS INTERNATIONAL; MGM
GRAND HOTEL, LLC,

Defendants,

AND ALL RELATED ACTIONS.

I. INTRODUCTION

“At its core, this case involves a casino marker dispute” is the opening sentence of MGM’s Motion for Summary Judgment. Nothing could be further from the truth. If it were true, MGM, not Dwight Manley, would be the plaintiff in this case. In truth, the core of this case involves the Ketamine poisoning of a once valued and frequent VIP guest of MGM and MGM’s total indifference to the actual and potential harm suffered by that guest – electing instead to take the route of avaricious exploitation of the guest’s unfortunate plight. After observing behavior clearly manifesting a state of drug induced intoxication, MGM’s treatment of him violated not only

1 MGM's written policies but also universally accepted norms and mores embodied in our law.

2 From the opening sentence of its Motion, MGM proceeds to attempt to build its case by
 3 ignoring the true facts that confront it in this case. For example, a continuous refrain of MGM is
 4 “there is no evidence to establish Manley’s allegations.” *E.g.*, Motion, 3:8-9. There are others that
 5 will be addressed in due course, but two of MGM’s “no evidence” assertions are central to virtually
 6 all of MGM’s arguments in its Motion: (1) there is no evidence that Dwight was poisoned by
 7 Ketamine the afternoon of December 10, 2021, while at the MGM; and (2) Dwight did not
 8 promptly disaffirm the credit transactions that resulted in the issuance of \$3.5 million in gaming
 9 markers he executed while in a drug induced incapacitated state but instead ratified them. Because
 10 these false arguments are lynch pins to other arguments raised by MGM which cannot stand
 11 without them, they are addressed first.
 12

13 II. ARGUMENT

14 A. The Evidence in the Record Demonstrates that Dwight Was Drugged with Ketamine While at the MGM on December 10, 2021.

15 On page 4 of its motion, MGM actually alleged:

16 Moreover, Defendants are entitled to summary judgment on Manley’s Negligence
 17 claim. Among other reasons, Manley cannot establish that Defendants breached
 18 any duty of care on December 10, 2021. ***There is simply no evidence that Manley’s***
drink was “spiked” with Ketamine by any MGM Grand bartender – or frankly –
“spiked at all. Indeed, even if Manley was purportedly drugged (he was not), the
 19 “spiking” of his drink with Ketamine and/or Ketamine contaminated ingredients
 20 ***was not*** foreseeable to Defendants. (Emphasis added.)
 21

22 The Motion goes on at page 8 to allege “***Defendants deny that Manley was ever drugged with***
 23 ***anything – let alone Ketamine – while at MGM Grand’s property.***” (Emphasis added.)
 24

25 Contrary to the extreme position taken by MGM, the record contains ample evidence for a
 26 jury to conclude that Dwight was drugged with Ketamine on the afternoon of December 10 while
 27 he was at MGM VIP Casino.

28 After Dwight returned to southern California on December 12, one of his physicians, Dr.

Soltani, arranged for a hair test to analyze whether Dwight had been drugged. It was necessary to wait a period of time for Dwight's hair to grow out before the necessary sample could be taken. Dr. Soltani took the hair sample required and sent it to the Carlson Company. The results were released January 31, 2022, and showed that a high level of Ketamine had been ingested by Dwight. The Carlson Company Inc. DFSA Test, Appendix Exhibit A at PAPP_008. The results were analyzed by Dr. Michael Sucher. Among his other qualifications, Dr. Sucher is a Medical Review Officer, which role includes interpreting drug results and their validity. He is an expert in the interpretation of drugging tests, including hair tests. Dr. Sucher reports that he has interpreted the validity and results of thousands of hair drug test results. Expert Report of Michel A. Sucher MD DFSAM ("Sucher Report"), Appendix Exhibit B at PAPP_011, ¶¶ 2-4. After his investigation, including review of the laboratory test results, he opined that:

It is my professional medical opinion that all the observations and findings noted above are consistent with poisoning by Ketamine. Further, based on the time frames involved it is also my professional medical opinion that Mr. Manley was drugged/poisoned at the beginning of the afternoon. This opinion is based on the fact that Ketamine has a rapid onset of action and that the most significant behaviors occurred from shortly after Mr. Manley was served his first drink and lasted throughout his gambling episode at MGM Grand and into the evening and early morning hours of the next day. This is consistent with the known onset of action and duration of action from Ketamine. My opinion is true to a reasonable degree of medical probability.^[1]

Id., at PAPP_017, ¶ 5. Dr. Sucher concluded his report expressing the following opinions:

In summary my professional medical opinions in this matter are:

1. Mr. Manley was poisoned with Ketamine in the early afternoon of 12/10/2021 at the MGM Grand Mansion.
2. Mr. Manley suffered mental and physical symptoms consistent with being poisoned by Ketamine as noted above and consistent with the onset and duration of action of Ketamine.

¹ "Ketamine is dissociative anesthetic used both in medical practice and illicitly as a drug of abuse. Ketamine has a half-life of 2.5-2.6 hours and its effects typically last 10-12.5 hours. Onset of action occurs very quickly, although slightly lower with oral administration which I believe occurred in this case. Ketamine comes in both powder or liquid forms." *Id.*, PAPP_017, ¶ 1.

1 3. There is no other reasonable explanation for the events of 12/10/2021.
 2 4. Mr. Manley does not suffer from a substance use disorder.
 3 5. The drug test result from the Hair Drug Test collected on 1/3/2022 was positive
 4 for Ketamine and Norketamine. These results are accurately reported as
 5 positive and support my opinion of Mr. Manley being poisoned by Ketamine at
 6 the MGM Grand Mansion on the afternoon of 12/10/2021.

7 *Id.*, at PAPP_018, ¶ 2.

8 Judge Philip Pro in *Neal-Lomax v Las Vegas Metropolitan Police Department*, 574
 9 F.Supp.2d 1193 (D. Nev. 2008), assessed the applicable standards for expert medical testimony
 10 regarding causation. He opined that under Nevada law:

11 To establish causation, a plaintiff must produce medical expert testimony
 12 opining to a reasonable degree of medical certainty that the allegedly defective
 13 product caused the plaintiff's injury. A possibility that the product caused the
 14 injury is insufficient. Nevada requires such expert testimony because "if the
 15 plaintiff's medical expert cannot form an opinion with sufficient certainty so as to
 16 make a medical judgment, there is nothing on the record with which a jury can
 17 make a decision with sufficient certainty so as to make a legal judgment."

18 *Id.* at 1198 (citations omitted).

19 This point becomes particularly important because MGM's expert, Dr. Daniel Overbeek,
 20 was so new to the role of expert witness that he did not know what was meant by the phrase "a
 21 reasonable degree of medical certainty." Dr. Overbeek is an engaging young physician who has
 22 only recently begun acting as an expert witness. When asked about his involvement in expert
 23 witness testimony, he unabashedly explained that he did it as a potential important source of
 24 revenue to someone confronted with medical school debt. Underscoring his lack of familiarity
 25 with the role of expert witness was this exchange which began his deposition:

26 Q. Dr. Overbeek, is it your opinion to a reasonable medical certainty that
 27 Dwight Manley was not poisoned with Ketamine on the afternoon of December
 28 10th, 2021?

26 A. I'm not sure what you mean by "a reasonable degree of medical
 27 certainty."

28 Q. As an expert, sir, what is the standard for your testimony if not a
 29 reasonable medical certainty or – well, what is the standard that you would follow?

30 A. I – I mean, the term "a reasonable degree of medical certainty" is not a

1 term I would use in a clinical scenario, right. I'm not really sure what it means,
 2 right. My – this is – these are my medical opinions based on my understanding of
 3 the evidence based on the information provided to me.

4 Deposition of Daniel L. Overbeek, M.D. taken on August 16, 2024 ("Overbeek Depo.") 5:8-24,
 5 Appendix Exhibit C at PAPP_046.

6 Working with the same information that was available to Dr. Sucher, Dr. Overbeek's report
 7 only went so far as to say, "I do not believe there is any definitive evidence showing that Mr.
 8 Manley was intoxicated with Ketamine on the 10th of December." Daniel Overbeek, MD Expert
 9 Report ("Overbeek Report"), Appendix Exhibit D at PAPP_063. In subsequent deposition
 10 testimony he retreated a bit:

11 Q. Do you acknowledge that it is possible that Manley was poisoned on
 12 December 10th, 2021?

13 A. Yes, it's possible.

14 Overbeek Depo. 9:13-15 Appendix Exhibit C at PAPP_047.

15 In at least two places in his report Dr. Overbeek opines that the symptoms displayed by
 16 Dwight can be explained by alcohol as easily as by Ketamine. Overbeek Report, pp.6-7 & 10.
 17 This is one of the reasons that alcohol remains an important issue in this case. Dr. Sucher presented
 18 a rebuttal report in response to Dr. Overbeek's report and explained that the symptoms he saw are
 19 very specific to Ketamine intoxication rather than alcohol. Rebuttal Expert Report of Sucher
 20 Medical Management, Ltd. ("Sucher Rebuttal Report"), Appendix Exhibit E at PAPP_068, ¶ 4:
 21 "While Dr. Overbeek did not witness any behavior specific to Ketamine intoxication I disagree
 22 and opine that his behaviors as stated in my initial report are very specific to Ketamine (or similar
 23 drugs) intoxication."

25 Dr. Sucher's conclusions are consistent with the observations of Tim Petropoulos. Mr.
 26 Petropoulos is a seasoned Expert Witness in the field of Drug Recognition. He has been accepted
 27 as a Drug Recognition Expert in more than 100 cases, many of which were homicides. He opined
 28

1 that he could not issue a formal expert report because he only had the video and that was not
 2 sufficient for a Drug Recognition Expert methodology. He did say, however, based on what he
 3 could see on the video, Dwight's manner of walking and standing was much more consistent with
 4 Ketamine intoxication than alcohol. He concluded:

5 It is my considered expert opinion that some of Mr. Manley's behaviors are
 6 consistent with the ingestion of ketamine-type drugs on the afternoon of December
 7 10, 2021, as described above and not solely alcohol intoxication. However, because
 8 I did not observe Mr. Manley at the time, I cannot express a final conclusion
 consistent with Drug Recognition methodology.

9 Expert Report of Tim Petropulos ("Petropulos Report"), Appendix Exhibit F at PAPP_075. In his
 10 Rebuttal Report, Dr. Sucher concurred with Mr. Petropulos:

11 I reviewed the report of Tim Petropulos who is a Drug Recognition Expert. His
 12 opinions which are mentioned above are fully consistent with my observations and
 13 opinions in this matter. He accurately describes findings and observations
 14 consistent with Ketamine intoxication and not caused by alcohol. I fully agree with
 15 his opinions and that agreement is true to a reasonable degree of medical
 probability.

16 Sucher Rebuttal Report, Appendix Exhibit E at PAPP_069 ¶ 6. Earlier in the same report Dr.
 17 Sucher reiterated his disagreement with Dr Overbeek:

18 Again, I disagree with Dr. Overbeek regarding this conclusion and I believe there
 19 are signs specific to Ketamine intoxication on 12/10/2021 and that he was
 20 intoxicated by Ketamine on that date. This opinion is true to a reasonable degree of
 medical probability.

21 *Id.* at PAPP_069 ¶ 3.

22 Nonetheless, Defendants contend that there is no evidence in the record that Dwight was
 23 the victim of Ketamine poisoning!

24 **B. The Jury Will Decide Whether Dwight Promptly Disaffirmed the Credit**
 25 **Transactions Upon Which MGM Bases Its Counterclaim and Are the**
 26 **Measure of a Large Portion of Dwight's Damages.**

27 MGM argues at pages 13 through 16 of its Motion that it is entitled to summary judgment
 28 on Dwight's incapacity defense to MGM's counterclaim seeking to enforce the \$1 million marker

1 signed by Dwight (which MGM claims has a remaining balance due of \$440,000) because, as a
 2 matter of law, Dwight did not promptly disaffirm the transaction after awakening from his
 3 involuntarily drug induced stupor the morning of December 11, 2021, but instead proceeded to
 4 ratify the transaction. A page 16, MGM concludes by asserting:

5 Because Manley (1) failed to promptly disaffirm the credit instruments at issue, and
 6 (2) instead, ratified them, any purported incapacity defense fails as a matter of law
 7 – and does not prevent the entry of summary judgment in MGM Grand's favor.

8 Motion,16:19-21.

9 MGM asserts this argument apparently forgetting that it has already been resolved in this
 10 case in Dwight's favor. In the Court's order granting Dwight's Motion for an Adverse Inference
 11 Jury Instruction (ECF No. 171) the Court stated:

12 Defendants also argue that the missing text messages have no potential
 13 relevance to Plaintiff's intoxication defense because Plaintiff failed to promptly
 14 disaffirm his debt and in fact ratified it by continuing to take out credit and gamble
 15 on December 11 and 12, 2021. *Id.* at 11-12. Plaintiff responds by asserting that his
 16 preservation demand on December 13, 2021, served as a prompt disavowal of the
 17 validity of his gambling debt. ECF No. 147 at 9. Defendant is correct that under
 18 Nevada law, an intoxication defense to a contract claim seeking to collect a
 19 gambling debt can only be established when “the intoxicated person … act[s]
 20 promptly to disaffirm” the debt. *LaBarbera v. Wynn Las Vegas, LLC*, 422 P.3d 138,
 21 141 (Nev. 2018) (citing Restatement (Second) of Contracts § 16 cmt.). However,
 22 *the Court finds whether Plaintiff acted with sufficient promptness in disaffirming
 23 his debt to be a factual question inappropriate for resolution at this stage of
 24 litigation.* See *Wynn Las Vegas, LLC v. Tofani*, Case No. 69936, 2017 WL
 25 6541827, at *1 (Nev. Ct. App. Dec. 14, 2017) (“[W]hether [plaintiff] affirmed the
 26 full amount of debt claimed by Wynn, and whether he disaffirmed the debt
 27 ‘within a reasonable time,’” are factual determinations.). Because the validity of
 28 Plaintiff’s defense cannot be determined at this stage, the Court finds it is at least
 possible that the missing texts may have been relevant and, therefore, that
 Plaintiff’s ability to maintain his defense has been prejudiced by their loss.

29 While the Court finds Plaintiff was prejudiced by the destruction of the text
 30 messages, the degree of prejudice must be determined with reference to other
 31 relevant evidence in the record. As explained above, *Plaintiff contends he is
 32 prejudiced by the destruction of the text messages at issue because “Manacher’s
 33 and Reboton’s knowledge of [Plaintiff’s] addled state at the time they approved
 34 large credit increases … is the very essence of [his] allegations.”* ECF No. 147 at
 35 7. *Yet, Defendants do not seem to dispute that these two employees were aware of
 36 Plaintiff’s intoxication when additional credit was extended. In their Response,*

1 **Defendants acknowledge Reboton's testimony that "she texted Mr. Manacher**
 2 **that Manley 'looked drunk' or 'wasted,' and also communicated about Manley's**
 3 **credit line increase request."** ECF No. 135 at 14, 49 (cleaned up). **Manacher**
 4 **similarly testified Reboton informed him via text that Plaintiff was intoxicated.**
Id. at 42.

5 **Given Defendants' acknowledgement that the missing texts contained**
 6 **comments on Plaintiff's inebriated state around the time the additional markers**
 7 **were signed, which supports what Plaintiff describes as "the very essence" of his**
 8 **claims, the missing texts would likely only offer further confirmation of this fact**
 9 **and at least potentially offer some more detail regarding the extent of the**
 10 **employees' knowledge.**

11 ECF No 171 7:22-8:24 (emphasis added). This ruling is well supported by the evidence and case
 12 law cited. It is now law of the case and should not be disturbed. *Zeyen v. Bonneville Joint District*
 13 #93, 114 F. 4th 1129 (9th Cir. 2024).

14 The preservation demand on December 13, 2021, referenced in the order that, according to
 15 the Court, "served as a prompt disavowal of the validity of [Dwight's] gambling debt" is in the
 16 record as ECF No. 121-10 & 11. Additional evidence relevant to MGM's "failure to promptly
 17 disaffirm" defense will be Dwight's testimony at trial set forth in his attached declaration where
 18 he states:

- 19 1. On January 3, 2022, working under the auspices of Dr. Soltani, I submitted a
 20 hair sample for drug testing. On January 31, 2022, the test results came back
 21 from The Carlson Company. A copy of the test results showing that I tested
 22 positive for having Ketamine in my system on December 10, 2021, is attached
 23 as [Appendix Exhibit A at PAPP_008]. These test results were given to MGM
 24 representatives shortly after I received them.
- 25 2. Beginning in February 2022, I and my colleagues who accompanied me on the
 26 December 10 trip to the MGM were the subject of polygraph examinations
 27 conducted by two retired FBI agents. Natalie Nasongkhla's polygraph
 28 examination took place on February 20, 2022. John Hermann's polygraph
 29 examination was conducted on February 20, 2022. Chris Snyder's polygraph
 30 examination was conducted on February 21, 2022. Omar Briosso's polygraph
 31 examination was conducted on February 22, 2022. My first polygraph
 32 examination took place on April 2, 2022. My second polygraph examination
 33 was conducted on April 27, 2022. The second polygraph examination of me
 34 was requested by MGM's counsel, Ashley Eddy to clarify a point.
- 35 3. All of the polygraph results were disclosed to the MGM or its representative
 36 during the April/May time frame.

1 4. On March 24, 2022, the MGM notified me that they would be presenting the
 2 \$2 million marker I had signed to my bank for payment. There were insufficient
 3 funds in that account at that moment. Working quickly with my bank, I arranged
 4 the transfer of sufficient money from another account so that the marker could
 5 and would be cleared by the bank. I did so for a couple of reasons: I thought the
 6 MGM was still investigating and would solve the question of who had poisoned
 7 me with Ketamine on December 10, 2021 and I knew that the MGM had more
 8 than sufficient assets to return the \$2 million once they had ascertained that I
 9 had been wronged. Furthermore, I did not want to have a reputation as someone
 10 who wrote bad checks and I believed that under Nevada law writing a check
 11 with insufficient funds was a criminal act that could result in a criminal penalty.
 12 5. Until March 24, 2022, I believed that MGM was conducting a good faith
 13 investigation of my claim of what had happened to me on December 10, 2021.
 14 6. On March 30, 2022, through my legal counsel at the time, I advised the Nevada
 15 Gaming Control Board, who was also investigating the matter, that I had paid
 16 the \$2 million marker but would be “pursuing the return of said funds based
 17 upon, among other things, the inability to consent to the transactions at issue
 18 due to impairment during the time frame of the gambling activity that gave rise
 19 to the Markers.” See letter dated March 30, 2022 from Chesnoff & Schonfeld
 20 to Nevada Gaming Control Board attached hereto [Appendix Exhibit G at
 21 PAPP_076-078].

14 Declaration of Dwight Manley, Appendix Exhibit H at PAPP_079-081.

15 C. **Summary Judgment Is Not Appropriate in a Negligence Case.**

16 In Nevada, it is well settled that:

17 The Courts are reluctant to grant summary judgment in negligence cases
 18 because foreseeability,[²] duty, proximate cause and reasonableness usually are
 19 questions of fact for the jury.

20 *Thomas v. Bokelman*, 86 Nev. 10, 13, 462 P.2d 1020, 1022 (1970).

21 In *Garcia v Wal-Mart Stores, Inc.* 2016 WL 3869845 (D. Nev.), the plaintiff was injured
 22 when she fell on a puddle of cooking oil on the floor. Employee Fernando Rosa had spilled the
 23 oil and then ineffectively tried to clean it up. District Judge Jennifer Dorsey framed the issue this
 24 way:

25 Because it is uncontested that Rosa created and attempted to remedy the
 26 hazardous condition, the remaining question in this case is whether he acted
 27 reasonably under the circumstances.

28 ² A detailed discussion of foreseeability in this case follows in the next section.

1 *Id.* at *1.

2

3 Judge Dorsey answered the question this way:

4 Courts are hesitant to grant summary judgment in negligence cases, and I
 5 am similarly hesitant to do so in this case. ‘Although an accident occurring on the
 6 premises does not itself establish negligence[,]’ it is undisputed that the dangerous
 7 condition in this case was created by a Wal-Mart employee and that the same
 8 employee had taken steps to remedy the situation before the slip and fall occurred,
 9 Wal-Mart and Rosa genuinely believe that Rosa did everything in his power to
 10 guard and remedy the spill that he had mistakenly created, but their belief does not
 11 answer the question of whether Rosa’s actions were reasonable. That Rosa had his
 12 back to Garcia and the spill when Garcia fell, and that Garcia was unaware of the
 13 spill and slipped and fell despite Rosa’s precautions, demonstrate that the
 14 reasonableness of Rosa’s actions is genuinely disputed. Because Wal-Mart
 15 demanded a jury trial consistent with FRCP 38(b) and L.R. 38-1 when it removed
 16 this case from state court, whether Rosa breached the duty of care or acted
 17 reasonably is a question that the jury must answer.

18 *Id.* at *2.

19 In *Garcia*, Judge Dorsey cited *Riley v. Opp IX, L.P.*, 112 Nec. 826, 919 P.2d 1071 (Nev.
 20 1996), for the proposition that: “Issues of foreseeability, proximate cause, and reasonableness
 21 usually present questions of fact for the jury.” *Garcia* at fn 22.

22 In *Riley*, the plaintiff was injured when he attempted to lift a heavy metal gate next to his
 23 place of employment. He filed suit against Opp IX, which was the landlord of the property leased
 24 by the plaintiff’s employer. Opp IX filed not one, not two, but three successive motions for
 25 summary judgment. The district court granted the third summary judgment motion and an appeal
 26 followed. The Nevada Supreme Court, in a *per curium* decision reversed, holding:

27 We have indicated that ‘in order to survive a summary judgment motion in
 28 a negligence claim, there must be factual disputes as to: (1) duty; (2) breach; (3)
 29 actual causation; (4) legal causation; and (5) damages.’ [Citation omitted.] The
 30 *Sims* court further stated that ‘[w]e have, in the past, indicated our hesitance to
 31 affirm the granting of summary judgment in negligence cases, because such claims
 32 generally present jury issues. *Id.*(citing *Van Cleave v. Kietz-Mill Minit Mart*, 97
 33 Nev. 414, 417, 633 P.2d 1220, 1222 (1981). . . .

34 The *Van Cleave* court, recognizing that inferences will be drawn in favor of the
 35 party opposing summary judgment, indicated that the party opposing the summary

judgment motion must show that he can produce evidence at trial to support his allegations. . . .

Id., 112 Nev. at 830-31, 919 P.2d at 1074.

The negligence claim before the Court in this case is replete with factual issues of foreseeability, proximate cause and reasonableness, which are questions for the jury—rendering summary judgment clearly inappropriate.

D. There Is Ample Evidence in the Record to Support a Jury Finding that Dwight's Ketamine Poisoning Was, or Reasonably Should Have Been, Foreseeable to the MGM.

Even though NRS 651.015 is a negligence statute, and even though the plaintiff, Dwight, clearly pled negligence and each of its elements the Court earlier concluded that because the Third Amended Complaint did not specifically refer to NRS 651.015, any discovery premised upon the foreseeability issues of NRS 651.015 were foreclosed even though Nevada is a notice pleading state. Accordingly, the Court restricted discovery to only those instances in which a report of involuntary drugging at an MGM property affirmatively asserted that an MGM *employee* was a suspect. The effect of Court's order was to limit discovery to only those security incident reports filed in the last five years where the guest specifically accused an employee of being responsible for the incident. Transcript of Motions Hearing, September 9, 2024, ECF No. 108 at 33:3-7; 35:4-37:3; 41:12-13.

This meant that any incident report of involuntary drugging that did not specifically identify an MGM employee as a suspect was excluded from discovery. If there were 10 cases of involuntary drugging alleged per week at the MGM Grand, that simple but important statistic was completely denied to the Plaintiff. Nonetheless, this unfairly constrained discovery did produce 11 instances in which patrons alleged that they were drugged by an MGM employee.³ Of particular

³ These reports are filed under seal attached as Appendix Exhibit I at PAPP 082-148.

1 significance in this regard was the fate of PK and SD.⁴ In her deposition, PK relates the following
2 events:⁵

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25

26 ⁴ The events surrounding PK and SD are subject to a confidentiality order. As support for
27 the factual arguments being made here, the Deposition of PK taken March 12, 2025 (attached as
Appendix Exhibit J at PAPP_149-186 “PK Depo.”) is filed under seal.

28 ⁵ PK Depo., 8:2-16:8, Appendix Exhibit J at PAPP_154-162 (filed under seal).

1 The incident is similar to Dwight's experience in that the cocktails involved were prepared
 2 by an MGM employee and presented directly to the patrons. [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]

6 [REDACTED] Not an endorsement for how MGM security was "investigating" drugging
 7 allegations.
 8

9 Mark Cassell is the Vice President of security operations for all of the MGM Las Vegas
 10 properties. Each of the hotel security departments report to him.

11 Throughout the MGM properties in Las Vegas, the security departments all use the same
 12 form of incident reports which are then put into a central database called iTrak. From that database,
 13 daily summaries are prepared and distributed to senior management of each hotel.
 14

15 Q Okay. Now, the daily security reports – I'm sorry, I shouldn't phrase it
 16 that way – the security reports are prepared incident by incident, correct?

17 A Yes.

18 Q Are there any reports given to management on a daily basis of what
 19 security incidents have occurred?

20 A Can you clarify which management you're talking about?

21 Q Sure. Let's start with something as simple as the MGM, if that's fair.
 22 Does the senior officers – excuse me, the senior executives receive daily reports of
 23 what security incidents have occurred in the preceding 24 hours?

24 A They receive what we call an executive brief and that is an automated
 25 summary of iTrak incidents for that period of time.

26 Q Is it usually done on a daily basis?

27 A Typically it's done on a daily basis. Some properties have it set up to –
 28 there was a point in time when some properties had it set up to be Monday through
 Friday. I believe that they all have it set up every day now, but I'm not positive.

29 Q And to what level of executive does the report go?

30 A That is up to each property. Typically, it will be what we consider the
 31 senior executive team, which would be the property president, the CFO, other
 32 members of that executive committee that are – that have a need to know and like

33 ⁶ Exhibits 1-3 to PK Depo. attached as Appendix Exhibit J at PAPP_166-186 (filed under
 34 seal).

35 ⁷ PK Depo. 25:18-20 at PAPP_162-1 (filed under seal).

to review those.

There's also some folks from, like, our risk management groups that are on those.

Deposition of Marc Cassell taken March 5, 2025 (“Cassell Depo.”) 22:10-23:17, Appendix Exhibit K at PAPP 192-193 .

Thus, senior management at the MGM received daily reports of all of the prior days' incident reports, which should include all reports of involuntary drugging such as that which befell PK, SD and Dwight. It would also include all the other involuntary drugging incidents reported to security that Plaintiff has been denied access to because they were not permitted to see any reports that did not indicate that the victim was claiming that the perpetrator was an employee. In short, incidents of involuntary drugging of guests at MGM resorts in Las Vegas prior to December 10, 2021, occurred. Very likely they were not uncommon and a jury could easily find that MGM management was aware—or reasonably should have been aware—of that fact.

Based on the foregoing evidence in the record, a jury will very likely find that on December 10, 2021, it was reasonably foreseeable that any patron at MGM could be the victim of an involuntary drugging incident and as an innkeeper and holder of a Nevada gaming license MGM had a duty to exercise reasonable care to prevent such incidents from happening, to recognize behavior of patrons consistent with being in a drug induced state and, when so observed, take reasonable steps to prevent further harm to the patron and to certainly not take actions exacerbating the harm. See ECF No. 28, 5:14-21, *infra* next section.

As will be seen in sections that follow, MGM clearly breached the duty of care it owed to Dwight by not just ignoring his drug induced state – MGM knew he was “wasted”⁸ – but actually took steps that seriously exacerbated the harm caused to Dwight by its failure to follow its own

⁸ ECF No. 171, 8:16-18.

written policies dictating how a patron in Dwight's condition should be treated in a casino resort environment offering gambling and free alcohol to gamblers.

E. Nevada Law Recognizes that a Special Relationship Exists Between an Innkeeper and Its Guests.

In its Order granting in part and denying in part MGM's Motion to Dismiss the First Amended Complaint (ECF No. 28), this Court ruled:

Manley has sufficiently pleaded the duty element of his negligence claim. The Court can reasonably infer from the FAC that Defendants owed Manley a duty of care in two ways: (1) Manley was an invited guest and patron on Defendants' premises when he sustained his injuries; or (2) the Nevada Gaming Regulations imposed a duty of care upon Defendants.⁹ *The Court can reasonably infer from the FAC that Manley-a VIP patron invited to gamble, eat, imbibe, and lodge at a casino resort owned and managed by Defendants-was an entrant to whom Defendants owed a "general duty of reasonable care ... regardless of the open and obvious nature of dangerous conditions."*

Id. at 5:14-21 (citation omitted; emphasis added).

In Nevada a special relationship exists between an innkeeper, like MGM, and an invited guest, like Dwight, as a matter of law. An innkeeper is in a special position of trust and duty for its guests. The innkeeper is in control and responsible for the health and safety of its guests when on its premises. The innkeeper is responsible for:

⁹ Nevada Gaming Commission Regulation 5.011 provides:

The Board and the Commission deem any activity on the part of a licensee, registrant, or person found suitable by the Commission, or an agent or employee thereof, that is inimical to the public health, safety, morals, good order, or general welfare of the people of the State of Nevada, or that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry, to be an unsuitable method of operation and shall be grounds for disciplinary action by the Board and the Commission in accordance with the Nevada Gaming Control Act and the regulations of the Commission. *The following acts or omissions, without limitation, may be determined to be unsuitable methods of operation:*

(a) Failure to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

(b) *Permitting a person who is visibly impaired by alcohol or any other drug to participate in a gaming activity.*

(c) *Complimentary service of intoxicating beverages in the casino area to a person who is visibly impaired by alcohol or any other drug.* [Emphasis added.]

- 1) Providing safe and affordable accommodations; when the guest is asleep, it is the innkeeper that is in charge of keeping the guest safe;
- 2) The innkeeper, not the guest, has control of the design, construction and maintenance of the premises;
- 3) The innkeeper, not the guest, is responsible for vetting and training all the staff;
- 4) The innkeeper, not the guest, is responsible for whatever systems and protocols for security and implementing them;
- 5) The innkeeper, not the guest, is responsible for determining who is allowed on the premises and who is not; and
- 6) It is the innkeeper and not the guest who sets whatever rules and regulations govern the use of the premises and its amenities such as gambling.

The guest is responsible for adhering to the innkeeper's regulations and protocols and for paying the appropriate charges – but nothing more. The power and the control of all aspects of the guest's experience, including health, well-being and security, all rest in the hands of the innkeeper. That may be why the courts are not hesitant to acknowledge this to be a special relationship different from a normal commercial transaction.

In *Morrison v MGM Grand Hotel*, 570 F. Supp. 1449 (1983), the plaintiff attended a hotel party as an invited guest of the MGM. When the guest went to his room carrying his gambling winnings, he was attacked in the elevator and robbed by an unknown assailant. The guest sued the hotel for negligence.

MGM responded by arguing there was no duty owed to protect someone from a criminal act. Judge Edward Reed disagreed, noting that if the crime is reasonably foreseeable, a duty may arise owed by the hotel to its invitee. Judge Reed pointed out that:

‘[a] special relationship giving rise to [a duty to protect another from a criminal attack by a third person] does ... exist, for example, between ... innkeeper-guest

1 [and] landowner-invitee.'

2 Of course, that was not the end of the analysis:

3 Notwithstanding the existence of a special relationship, the duty of a landowner to
 4 take affirmative action to control the wrongful acts of third persons arises only
 5 where he 'has reasonable cause to anticipate such acts and the probability of injury
 6 resulting therefrom and fails to take affirmative steps to control the wrongful
 7 conduct.' ...

8 Denying the MGM's motion for summary judgment: [T]he court finds that plaintiff
 9 has made a sufficiently specific allegation that the defendant could reasonably have
 10 foreseen or anticipated the criminal conduct in question....

11 It is unfortunately true that in today's world the threat of date rape drugs like Ketamine is all too
 12 common and foreseeable. See ECF No. 84-4.

13 The following year the Nevada Supreme Court cited *Morrison* in *Early v N.L.V. Casino*
 14 Corp., 100 Nev. 200, 678 P.2d 683 (1984). In that case, the plaintiff Mrs. Early was beaten and
 15 robbed in a casino restaurant. Mr. and Mrs. Early brought a negligence case against the defendant.
 16 The casino asserted that it owed no duty to the plaintiffs and successfully moved for the dismissal
 17 of the case at the district court level. Plaintiffs appealed and the Nevada Supreme Court reversed,
 18 stating that:

19 In other words, if the evidence presented in the instant case provides a reasonable
 20 inference of actionable negligence, involuntary dismissal is inappropriate.

21 The Supreme Court relied, in part, on the Restatement of Torts Section 344 comment f:

22 If the place or character of his business, or his past experience, is such that he should
 23 reasonably anticipate careless or criminal conduct on the part of third persons,
 24 either generally or at some particular time, he may be under a duty to take
 25 precautions against it, and to provide a reasonably sufficient number of servants to
 26 afford a reasonable protection.

27 The Court went on to interpret *Morrison* to mean that when a hotel such as MGM had reasonable
 28 cause to anticipate a criminal act, "the reasonableness of the hotel's efforts to discharge its duty"
 29 was an issue for the jury to determine.

30 The Nevada Supreme Court returned to these issues in *Lee v GNLV Corp.*, 117 Nev. 291,

1 22 P.3d 209 (2001), a negligence case arising from a fatal chocking incident in a hotel restaurant.

2 This court, however, has stated that, where a special relationship exists between the
3 parties, such as with an innkeeper-guest, teacher-student or employer-employee, an
affirmative duty to aid others in peril is imposed by law.

4 Because a special relationship exists between a restaurant and its patrons,
5 and because there is no dispute that GLV was ‘in control of the premises,’ GLV’s
6 employees were under a legal duty to come to the aid of Sturms.

7 Thus, we have stated that “[c]ourts are reluctant to grant summary
judgment in negligence cases because foreseeability, duty, proximate cause and
8 reasonableness usually are questions of fact for the jury....

9 *Boutwell v PHWLV, LLC*, 135 Nev. 616, 451 P3 83 (2019), was a negligence case brought
10 by a hotel casino guest against the Planet Hollywood and Casino. Boutwell alleges that when he
11 first went to his room at 3 in the morning, he put his luggage on the floor in the entry-way and
12 moved into the unlit bedroom and, out of the corner of his eye, he saw a life-sized mannequin in a
13 display case and thought it was a malevolent wrongdoer. He turned to flee and tripped over his
14 own luggage and broke bones. For this he sued the hotel. The District Court dismissed the action
15 arguing the hotel did not owe a duty. The Supreme Court reversed, holding:
16

17 A proprietor of a hotel has a duty to use reasonable care to keep the premises
18 safe for its patrons. [Citations omitted.] (acknowledging that certain relationships
19 such as that of an innkeeper and guest gives rise to a heightened duty to exercise
reasonable care). That includes that the owner or occupier of land ‘take reasonable
20 precautions to protect the invitee from dangers which are foreseeable from the
arrangement or use.’ [Citation omitted.] ... That said, ‘foreseeability, duty,
proximate cause and reasonableness usually are questions of fact for the jury.’
21

22 **F. Defendants Violated Their Own Written Policies When They Issued Two**
Large Denomination Markers to Dwight Late in the Afternoon of December
10, 2021.

23 Defendants proudly tout their Responsible Gaming Best Practices which is a formal written
24 policy applicable to all of the MGM properties, including the MGM Grand. Appendix Exhibit L,
25 PAPP_197-201 (filed under seal). At page 3 of the Responsible Gaming Best Practices policy it
26 provides:
27
28

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Appendix Exhibit L at PAPP_200 (filed under seal; emphasis added).
5

6 A separate responsible beverage service policy is the Techniques of Alcohol Management
7 Server/Seller Participation Manual (the “TAM Manual”), Appendix Exhibit M, PAPP_202-268.
8 In her March 28, 2024, deposition, Jerilyn Koch, the bartender who prepared Dwight’s first Old
9 Fashioned cocktail, was shown the TAM Manual. She identified it as something that was made
10 available to all the bartenders at the MGM. In addition to training on the TAM Manual, bartenders
11 at the MGM also have an online program called Alcohol Awareness:
12

13 Q. Okay. Does the MGM Alcohol Awareness Program disagree with the
14 TAM program in any regard?
15 A. No.

16 Q. Do you expect the servers, the cocktail servers, to be bound by the TAM
17 protocols?
18 A. Yes.

19 Q. And are they also bound by the Alcohol Awareness Program?
20 A. Yes.

21 Deposition of Jerilyn Koch taken March 28, 2024 (“Koch Depo.”) 36:20-37:3. Appendix Exhibit
22 N at PAPP_277-278.

23 The TAM Manual has a whole section devoted to alcohol and drugs. Lesson 7 titled
24 “Alcohol and Drugs” provides:

25 **ALCOHOL-MEDICATION INTERACTIONS**

26 Many medications can interact with alcohol, leading to increased risk of illness,
27 injury or death. For example, it is estimated that alcohol-medication interactions
28 may be a factor in at least 25 percent of all emergency room admissions.

HOW ALCOHOL AND DRUGS INTERACT

To exert its desired effect, a drug generally must travel through the bloodstream to
its site or action, where it produces some change in an organ or tissue. The drug’s

1 effects then diminish as it is processed (metabolized) by enzymes and eliminated
 2 from the body. Alcohol behaves similarly, traveling through the bloodstream,
 3 acting upon the brain to cause intoxication, and finally being metabolized and
 4 eliminated, principally by the liver. The extent to which an administered dose of a
 drug reaches its site of action may be termed its availability. Alcohol can influence
 the effectiveness of a drug by altering its availability.

5 Appendix Exhibit M at PAPP_206.

6 In other words, a mixture of drugs and alcohol can be dangerous and can lead to death.
 7 Among the drugs addressed by the TAM Manual are those commonly called “club drugs,” which
 8 include cocaine, marijuana, morphine, heroin, methamphetamine, PCP, ecstasy, GHB, Rohypnol,
 9 Ketamine and LSD. *Id.* at PAPP_228-230. The manual describes the effects of Ketamine as
 10 follows:

12 Ketamine decreases awareness of general environment, sedation, dream-like state,
 13 vivid dreams, feelings of invulnerability, increased distractibility, disorientation
 14 and subjects are generally uncommunicative. Intense hallucinations, impaired
 15 thought processes, out-of-body experiences and changes in perception about body,
 surroundings, time and sounds. Delirium and hallucinations can be experienced
 after awakening from anesthesia.

16 *Id.* at PAPP_230.

17 The manual goes on to provide the basic practice to be followed to keep the customer and
 18 the establishment safe. In other words, the manual establishes a standard of care to be followed
 19 when serving alcohol at the MGM. *Id.* at PAPP_232-235. In summary, the principle elements in
 20 that standard of care are 1) sizing up the customer which basically means assessing age, sobriety,
 21 gender and body type; 2) conversing with the customer before every drink order is served so that
 22 the current state of sobriety can be ascertained; and 3) to “rate” the customer as to whether they
 23 are okay to be served, served with caution, or not to be served at all. This third step represents a
 24 process to be followed whenever a customer orders another drink.

26 None of these steps were performed with respect to Dwight on December 10. No one on
 27 behalf of MGM testified that Dwight had been sized up, interviewed or “rated” before being served
 28

1 each of his six Old Fashioneds. In adopting the TAM Manual and requiring its employees to adhere
 2 to its directives, the TAM Manual represents the standard of care obviously considered reasonable
 3 by MGM in dealing with a patron in the “drunken” and “wasted” condition their management
 4 observed Dwight to be in on December 10. From this a jury could easily conclude that the manner
 5 in which Dwight was served cocktails repeatedly fell below the standard of care owed to Dwight.
 6
 7 See, *Estate of Wilson by Wilson v. Las Vegas Metropolitan Police Department*, 2020 WL
 8 6930099, *7 (D. Nev.).

9 Chris Snyder, who was part of Dwight’s entourage, testified at page 45 of his deposition
 10 that he had a conversation with Vanessa in the late afternoon at which time she said that “they”
 11 felt that Dwight was being erratic but not to worry because she had it “handled.” The reference to
 12 “they” appears to refer to some undisclosed persons in MGM management. The latter reference
 13 almost certainly relates to the two additional markers she presented to Dwight a few minutes later.
 14 Chris testified that Vanessa made these statements just before Chris took Dwight to the restroom
 15 to treat a cut he got from a broken ashtray. Deposition of Christopher R. Snyder taken March 22,
 16 2024 (“Snyder Depo.”) 45:9-46:17, Appendix Exhibit at PAPP_286-287.

17 MGM produced a timeline of events as they happened in chronological order prepared by
 18 MGM’s surveillance department from the video tapes.¹¹ Timeline of events (“Timeline”),
 19 Appendix Exhibit P at PAPP_300-302 (filed under seal). That chronology shows that the ashtray
 20 was broken [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

23
 24
 25
 26
 27
 28

¹¹ Defendant MGM Grand Hotel, LLC’s Responses to Plaintiff’s Second Set of Requests for Admissions served March 8, 2024, 5:20-6:14, Exhibit P, PAPP_289-302, and Exhibit 3 thereto (“Timeline”), PAPP_300-302 (filed under seal).

1 [REDACTED] In other words, Vanessa had things
 2 handled so well that in ten minutes Dwight, who had been acting erratically, committed himself to
 3 \$1.5 million in additional markers.

4 It is noteworthy that Vanessa acknowledged in her deposition that she thought Dwight was
 5 impaired at the end of the afternoon—even remarking in a text message to her superior, Justin
 6 Manacher, that Dwight appeared “wasted.” [REDACTED]
 7

8 [REDACTED] Vanessa testified:

9 Q. On December 10th, did you have any conversations with Justin Manacher
 10 about Dwight’s behavior?

11 A. Via text, yes.

12 Q. What do you recall being discussed in those texts?

13 A. I believe I said he looks – he looks drunk.

14 Q. Okay.

15 A. Or wasted. Or I don’t know the exact word.

16 Q. Well, what did Justin say in response, if anything?

17 A. I don’t -I don’t remember his response.

18 Q. Do you recall what time of day it was you told Justin that Dwight looked
 19 drunk?
 20 A. I don’t know the time, but after he had gotten up from the table and he
 21 was a little wobbly.

22 Q. Was that the first time you told somebody you thought Dwight was
 23 drunk?
 24 A. Yes.

25 Q. Did you tell anybody else you thought Dwight was drunk?

26 A. Not that I recall.

27 Q. Did you tell Dwight you thought he was drunk?

28 A. No.

Q. Did you tell anybody in his group you thought he was drunk?

A. I don’t think I told them. They were observing him, so I don’t believe I
 29 said anything of that nature to them.

30 Deposition of Vanessa Reboton taken March 27, 2024, 59:7-60:11 (“Reboton Depo.”), Appendix
 31 Exhibit R at PAPP_314-1 & 314-2; ECF No. 171, 8:16-18. That testimony is consistent with what
 32

33 [REDACTED]

34 [REDACTED]

35 [REDACTED]

she told Chris an hour earlier.

When Vanessa was asked about the erratic comment in her deposition, she equivocated in her answer, not denying the conversation but saying only that she did not remember it:

Q. Okay. I want to go for just a moment to the issues about Dwight behaving erratically. While you're on the casino floor, the VIP casino, did you tell Chris Snyder that they thought Dwight was behaving erratically?

A. No. I don't remember saying that.

Q. And if you were going to ask me who they is, I don't know.

A. Yeah.

Q. Okay. Did you tell Chris Snyder at that time that not to worry, you had taken care of it?

A No

Q. So you don't remember the first part of the conversation, but this part, you're saying it didn't happen?

A. No, I don't remember saying that.

Q. You don't remember saying it?

A. No.

Reboton Depo., 57:21-58:13, Appendix Exhibit R at PAPP_313-314. Inasmuch as Vanessa acknowledges telling Justin shortly after 5 pm that she thought Dwight was “wasted,” it would not be difficult for the trier of fact to conclude that she **had** told Chris Snyder that Dwight was acting erratically an hour earlier. As noted by the Court in its Order granting Plaintiff’s Motion for Adverse Inference Jury Instruction:

[E]vidence that MGM employees continued to extend Plaintiff credit despite awareness of his intoxicated state is potentially probative of whether Defendants breached a duty towards Plaintiff. The fact that the subsequent extension of credit was never used would go to what, if any, damages Plaintiff suffered if negligence is found. *Second, because the text messages were lost, it is impossible to know with certainty that they did not, by way of example only, include comments indicating Reboton was aware of Plaintiff's inebriated state well before the relevant texts were sent.* It is this loss and the possibility that the text messages favored Plaintiff that renders the loss of the text messages prejudicial.

¹³ ECF No. 171, 7:14-21 (emphasis added).

¹³ Plaintiff notes that the Court's order (ECF No. 171) erroneously recites at page 2, lines 6-7 that Dwight had executed documents for a \$2 million credit line ***the day before his stay***. The cited authority for the Court's statement is Plaintiff's brief filed November 12, 2024 (ECF No. 121). That brief recites:

1 **G. The Jury Should Decide Dwight's Claim for Unjust Enrichment.**

2 MGM correctly recites the elements of an unjust enrichment claim articulated in *Topaz*
 3 *Mut. Co., Inc. v. Marsh*, 108 Nev. 845, 839 P.2d 606, 613 (1992), and *Unionamerica Mortg. &*
 4 *Equity Tr. v. McDonald*, 97 Nev. 210, 626 P.2d 1272, 1273 (1981):
 5

6 The essential elements of an unjust enrichment claim are: (1) a benefit conferred
 7 on the defendant by the plaintiff; (2) appreciation by the defendant of such a benefit;
 8 and (3) acceptance and retention by the defendant of such a benefit.
 9

10 Motion, 28:20-22. MGM then posits that “unjust enrichment is not available when there is an
 11 express, written contract” which is true with this critical caveat: The “express, written contract”
 12 must be valid and enforceable. Where a contract is invalid and unenforceable, as in this case
 13 because of Dwight’s incapacity, there simply is no contract that can be pursued: “[*U*njust
 14 *enrichment applies* in the contract context ... when a party renders a valuable performance or
 15 confers a benefit upon another *under a contract that is invalid, voidable, or otherwise ineffective*
 16 to regulate the parties’ obligations.” Restatement (Third) of Restitution § 2(2) (emphasis added).
 17 As demonstrated in Section II(B) *supra*, MGM’s credit instruments were promptly disaffirmed by
 18 Dwight and:

19 Under Nevada law, a ‘person incurs only voidable contractual duties by entering
 20 into a transaction if the other party has reason to know that by reason of
 21 intoxication’ he is unable to ‘understand ... the transaction’ or to ‘act in a reasonable
 22 manner in relation to the transaction.’ *LaBarbera v. Wynn Las Vegas, LLC*, 422
 23 P.3d 138, 141 (Nev. 2018) (quoting Restatement (Second) of Contracts § 16 (Am.
 24 L. Inst. 1981)).

25 The first involvement was just before Dwight’s travel to the MGM. On
 26 December 9, Dwight Manley was approved for a \$2 million corporate credit fund
 27 with the express approval of Justin Manacher. MGM00160.

28 Id. at 8:14-16. This is correct. Dwight was *approved* for a temporary increase in his credit line
 29 from \$0 to \$2 million on December 9 but no documents effectuating that increase were executed
 30 by him that day. It was not until he arrived on property *on December 10 that he executed* a Marker
 31 Limit Increase Request for Nevada Properties which bears that same date. MGM Appendix (ECF
 32 No. 161) Exhibit 7, p. 039. Dwight could not have executed this document earlier as he was in
 33 California. At this juncture, the timing issue by itself does not appear to be terribly relevant, but
 34 we do not want this to complicate a timeline prepared in the future.

1 MGM Grand Hotel v. Long, 2024 WL 302187 (January 26, 2024, D. Nev.) *1.

2 Ultimately, whether Dwight lacked the capacity to contract due to his drug induced
3 intoxication on December 10, 2021, when he executed the credit instruments upon which MGM
4 relies for its breach of contract claim is a question of fact for the jury.

5 ***Whether the intoxication was so great as to suspend or destroy the power***
6 ***of intelligent assent, is a question of fact.*** Nor does it make any difference that the
7 drunkenness was voluntary and willful, for ***the legal theory is, that, without the***
8 ***capacity of giving a deliberate assent, no contract can be made.*** Story on Contr.
9 (5th ed.) 86.

10 Johnson v. Harmon, 94 U.S. 371, 382 (1876) (emphasis added). Likewise, the issue of whether
11 MGM was unjustly enriched is a determination to be made by the jury.

12 We conclude that this conflicting evidence regarding whether or not a
13 benefit was conferred upon the Brooks Trust created a genuine issue of material
14 fact, and that the district court erred in granting summary judgement in favor of
15 Brooks Trust on this issue but was correct in denying LeasePartners' motion on the
16 same. Therefore, this issue must be remanded to the district court for the trier of
17 fact to determine whether Brooks Trust was unjustly enriched, and if so, to what
18 extent.

19 Leasepartners Corp. v. Robert L. Brooks Trust, 113 Nev. 747, 756, 942 P.2d 182, 187-88 (1997).

20 III. CONCLUSION

21 At its core, this is a negligence case involving the exploitation of a long-time VIP gaming
22 patron who became unknowingly incapacitated through no fault of his own. In facing this
23 predicament, with MGM management having observed behavior that was "erratic" to the point
24 Dwight was described as being "wasted," MGM elected to ignore its own written policies
25 embodying reasonable common sense, cultural norms and mores designed to prevent the harm
26 suffered here by Dwight in favor of an avaricious pursuit of profit greatly exacerbating that harm.
27 Plaintiff has marshalled more than sufficient evidence to demonstrate genuine issues of material
28 facts that can only be resolved by the jury in this case. Summary judgment is clearly inappropriate,
 and MGM's Motion should be denied in all respects.

1 DATED: July 7, 2025

Respectfully submitted,

2 PRHLAWLLC

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INDEX TO APPENDIX OF EXHIBITS

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B	Expert Report of Michel Sucher MD DFSAM	30	PAPP_010-040
C	Portions of Deposition of Daniel L. Overbeek, MD	11	PAPP_41-052
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that on this 7th day of July 7, 2025, I caused the foregoing **REDACTED PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (ECF NO. 160)** to be served by the Court's CM/ECF System to all parties and counsel of record.

/s/Charles H. McCrea